

Letter of Findings: 04-20130191P
Sales Tax
For Tax Periods January 1, 2008, to December 31, 2011

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ISSUE

I. Tax Administration–Negligence Penalties.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department exercise its discretion to abate the ten-percent negligence penalties.

STATEMENT OF FACTS

Taxpayer is a manufacturer of consumer products in Indiana. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer, for the tax periods January 1, 2008, to December 31, 2011. Based upon that audit, the Department issued a proposed assessment for sales tax, penalty, and interest. Taxpayer protests the imposition of penalty, and this Letter of Findings results.

I. Tax Administration–Negligence Penalties.

DISCUSSION

Taxpayer protests the imposition of the negligence penalties assessed pursuant to the Department's sales and use tax audit of Taxpayer for the tax periods January 1, 2008 to December 31, 2011. Indiana Regulation [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

Taxpayer has provided sufficient information to establish that its failure to pay the deficiency in this instance was not due to Taxpayer's negligence, but was due to reasonable cause as required by [45 IAC 15-11-2\(c\)](#). While Taxpayer's current circumstances show that Taxpayer acted with reasonable cause, Taxpayer should be on notice that should these circumstances arise again, penalty waiver may not be warranted.

FINDING

Taxpayer's protest of the imposition of the penalties is sustained.

Posted: 08/28/2013 by Legislative Services Agency

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